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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KEVION MICHAEL THOMPSON, Defendant and Appellant.	E063396 (Super.Ct.No. FVI1401879) OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin, Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, and Barry Carlton and Heidi Salerno, Deputy Attorneys General for Plaintiff and Respondent.

A jury convicted defendant and appellant Kevion Michael Thompson of assault with a firearm (Pen. Code, § 245, subd. (a)(2); count 1), criminal threat (Pen. Code,

§ 422; count 2), and disobeying a court order (Pen. Code, § 166, subd. (a)(4); count 3). The jury also found true allegations that defendant had personally used a handgun (Pen. Code, § 12022.5, subd. (a)) in committing the offenses described in counts 1 and 2. The trial court sentenced appellant to an aggregate term of 14 years in state prison.

On appeal, defendant argues the trial court erred by summarily denying his motion for release of juror identification information, contending he at least demonstrated a "prima facie case of juror misconduct," requiring an evidentiary hearing. We find no error, and affirm.

I. FACTS AND PROCEDURAL BACKGROUND

The prosecution presented evidence that Anthony Smith, Sr. (victim) was a man who went to defendant's cousin's house on the morning of December 2, 2013, looking for his teenage children, a son and daughter.[1] A month before, the victim had obtained a restraining order requiring defendant to stay away from his daughter. He was aware that his children went to that location with defendant, despite the restraining order.

When the victim knocked on the door, defendant answered. Defendant denied that the victim's son or daughter were inside. The victim told defendant that, since there was a restraining order, he would "just go ahead and call the cops and have them come get her out of here." Defendant responded by pulling out a handgun, pointing it at the victim, and saying "I'm tired of your ass." At this point, the victim's son came running out of

[1] The victim's daughter was born in 1998. Defendant was born in 1995. The record does not reveal the victim's son's exact age, but it does establish that he went to elementary school together with defendant's cousin, was friends with defendant, and was young enough to be in school at the time of the events at issue.

the back room, and tried to intervene, both verbally and physically. The victim backed away to the sidewalk; eventually, his son and daughter came outside, and they left.

Defendant did not testify on his own behalf, and the sole witness he called in his defense testified only regarding a separate altercation between defendant and the victim that took place in 2014. Defendant did not call as witnesses several other people, including members of his family, who were at the house of defendant's cousin on the morning of December 2, 2013.

Defendant's trial was conducted over several days in December 2014, with the jury returning its verdicts on December 10, 2014. Sentencing was initially set for January 23, 2015, but was continued at the request of the probation department to February 6, 2015. The defense subsequently sought, and obtained, five continuances of the sentencing hearing. On February 6, 2015, an attorney specially appeared to inform the court that defendant's attorney of record was ill, and obtained a continuance until February 24, 2015. The same attorney specially appeared again on February 24, 2015, and obtained another continuance, the basis for which is not recorded in the court's minutes. On February 27, 2015, defendant's attorney of record appeared, indicated his intention to file a motion for new trial, and obtained a third continuance, to April 3, 2015, on that basis. On April 3, 2015, defense counsel again sought and obtained a continuance, the basis for which is not recorded in the court's minutes. Finally, on April 10, 2015, an attorney again specially appeared, representing to the court that defendant's counsel of record was ill, and obtaining a continuance to April 14, 2015, on that basis.

On the morning of April 14, 2015, defendant's counsel of record appeared, but indicated that he had been unaware the matter was on for sentencing. Defense counsel indicated that he had some "paperwork" that he had intended to get filed, and would have brought with him if he had known that the case was on for sentencing. He indicated that the paperwork was a "declaration from the private investigator that spoke to a juror," as well as his own declaration, and that he intended to request "the name of at least one juror." He requested a continuance of sentencing to the next morning.

The trial court found no good cause for a continuance, and proceeded with sentencing. During argument on sentencing issues, however, defense counsel requested a sidebar conference, at which point proceedings were adjourned to the afternoon. At the opening of the afternoon proceedings, defense counsel presented the court with a copy of certain documents, apparently defendant's motion for release of juror information and supporting documentation, which was filed at some point on April 14, 2015.

The supporting documentation submitted includes an undated declaration from a private investigator, stating that he and defense counsel were approached by a juror in the hallway outside the courtroom on December 10, 2014, after the jury was excused.[2] According to the investigator, the juror "informed us that the defense did not provide

[2] In dismissing the jury after it had returned its verdicts, the trial court had encouraged jurors to speak to counsel for either side, if they wished, stating "I'm sure that if anyone wants to stick around and give them any kind of information, any kind of critique, any suggestions, anything that you might want to ask or talk to them about, they would love to hear it. [Counsel for both the prosecution and the defense] are very young . . . . I know when I was a young attorney, a long, long time ago, I benefited greatly by people who were willing to take the time and give me any kind of information. I'll call it constructive criticism."

enough evidence to prove that [defendant] was innocent. He also mentioned that [defendant's] family did not testify to tell their side of the story." Defense counsel's declaration describes the same encounter, somewhat differently: the juror is said to have informed them that defendant was convicted because "the defense failed to call the right witnesses. [¶] The juror went on to explain that the prosecution had witnesses that were relatives of the victim, the Defense did not call relatives of the defendant. The juror stated, you would have won if you had his family testify."

The trial court denied the motion, citing both the further delay in sentencing that granting the motion would require, and the motion's merits. It then proceeded with the sentencing hearing.

II. DISCUSSION

A. Standard of Review

We review a trial court's denial of a motion to disclose juror information after trial under the deferential abuse of discretion standard. (*People v. Jones* (1998) 17 Cal.4th 279, 317.) We also review the trial court's decision to deny a request for an evidentiary hearing to resolve factual disputes concerning a claim of juror misconduct under an abuse of discretion standard. (*People v. Avila* (2006) 38 Cal.4th 491, 604.)

Our analysis below, however, does not turn on the standard of review; our conclusions would be the same even if a de novo standard applied. As such, we need not and do not address defendant's arguments on that issue.

B. Analysis

Defendant's sole claim on appeal is that the trial court erred by summarily denying his motion to release juror identification information. For the reasons expressed below, we find no error.

In a criminal proceeding, jurors' personal identification information "shall be sealed," unless the defendant submits a declaration stating facts that establish good cause for release of that information. (Code Civ. Proc.,[3] § 237, subds. (a)(2), (b); see also § 206, subd. (g) [authorizing criminal defendant to petition court for access to juror information "for the purpose of developing a motion for new trial or any other lawful purpose"].) If the defendant establishes a prima facie showing of good cause, the court shall set the matter for a hearing unless the record shows a compelling interest against disclosure. (§ 237, subd (b).)

While section 206 does not contain an express time limitation for a petition to access juror information, it does impose a requirement that the information be sought for a "lawful purpose." (§ 206, subd. (g).) "As such, we must consider the request in light of any time limitations associated with the purpose for which the information is sought. For clearly, if the defendant or the defendant's counsel is precluded from using the information for that expressed purpose due to time constraints, his or her request cannot be said to have been made for a lawful purpose." (*People v. Duran* (1996) 50 Cal.App.4th 103, 122 (*Duran*).)

[3] Further undesignated statutory references are to the Code of Civil Procedure.

Defendant requested juror information for the purpose of developing information to support a motion for new trial. The Penal Code provides that an "application for a new trial must be made *and determined* before judgment . . . ." (Pen. Code, § 1182, italics added.) Therefore, for the requested information to be used for the purpose for which it was sought, it would have been necessary for the trial court to again continue defendant's sentencing. "As such, Penal Code section 1050 came into play." (*Duran, supra,* 50 Cal.App.4th at p. 122.)

Penal Code section 1050 requires the courts to expedite proceedings in criminal cases, allowing for continuances only upon a showing of "good cause." (Pen. Code, § 1050, subds. (a), (e).) "'Such a showing requires, inter alia, a demonstration that both the party and counsel have used due diligence in their preparations.'" (*Duran*, *supra*, 50 Cal.App.4th at p. 122.)

Defendant failed to make the requisite showing of good cause below. His request for juror information rests on a conversation between a juror and defense counsel and a private investigator working with the defense that took place on December 10, 2014, immediately after trial. Defense counsel's intention to seek a new trial had already been the basis of the February 27, 2015 continuance of his sentencing. Defense counsel could have requested juror information at least in February 2015, if not December 2014. Without any explanation, he chose not to do so, instead raising the issue of obtaining juror information for the first time only months later, after multiple continuances of defendant's sentencing. To put it mildly, defendant's showing of due diligence was inadequate.

Because defendant failed to show that he exercised due diligence, the trial court properly declined to continue sentencing yet again, as would have been necessary for any motion for new trial to be prepared and filed by defendant's counsel. And because defendant sought juror information to support a motion for new trial, there was no longer any lawful purpose to be served by releasing the information. Defendant's untimely request for juror information was properly denied.[4]

III. DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

MCKINSTER
J.

MILLER
J.

[4] Defendant has not argued on appeal that he received inadequate assistance of counsel based on his trial attorney's delay in seeking juror information. Nevertheless, to forestall any such claim on habeas, we note briefly that the motion was also properly denied on the merits. Evidence of jurors' mental processes in reaching their verdict is generally inadmissible. (Evid. Code, § 1150.) Evidence that a juror may have, after trial, considered a matter not properly considered under the jury's instructions, or in a manner not strictly in accordance with the jury's instructions, falls well within this general rule. (See *People v. Johnson* (2013) 222 Cal.App.4th 486, 490-491, 494-495 [finding evidence of statement by juror after trial, questioning why defendant had not taken the stand in his own defense, to be "entirely irrelevant"].)